

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MICHAEL TRAYNOR,

Case No. 2:16-CV-251 JCM (PAL)

**Plaintiff(s),**

## ORDER

V.

**COLORADO CASUALTY INSURANCE  
COMPANY aka/dba SAFECO INSURANCE,  
et al.,**

Defendant(s).

Presently before the court is defendant Colorado Casualty Insurance Company's motion for declaration of offset. (ECF No. 16). Plaintiff filed a response (ECF No. 24), and defendant filed a reply (ECF No. 26).

## I. Background

On January 13, 2016, plaintiff filed a complaint in Nevada state court alleging breach of contract against defendant regarding insurance coverage for medical treatment in connection with a December 15, 2011, automobile accident with an underinsured driver. (ECF Nos. 1-1, 16). On February 8, 2016, codefendant United Financial Casualty Company removed this case to federal court. (ECF No. 1).

Plaintiff asserts that, as of October 6, 2015, he had “incurred medical expenses from health care providers in excess of \$185,000.00 with future recommended medical expenses of over \$200,000.00” and now seeks coverage pursuant to an agreement with defendant, manifested in policy number PLPW289540. (ECF No. 1-1 at 4–5). Accordingly, plaintiff alleges two claims for breach of contract. (*Id.* at 5–6).

In the instant motion, defendant contests that plaintiff would have been eligible for worker's compensation, but he did not apply for the same. (ECF No. 16). As a result, defendant requests a declaration that "Colorado Casualty Insurance Company is entitled to an offset of

1 amounts to which [plaintiff] was eligible to receive from workers' compensation insurance,  
 2 including all medical specials, lost wages, and any permanency found to be applicable." (*Id.* at 8)  
 3 (emphasis removed). To this end, plaintiff refers to its language in its "limit of liability" section  
 4 of the applicable insurance policy, which states:

5 No one will be entitled to receive duplicate payments for the same elements of loss  
 under this coverage and Part A or Part B of this policy . . . .

6 D. We will not pay for any element of loss if a person is entitled to receive payment  
 for the same element of loss under any of the following or similar law:

- 7 1. *Workers' compensation law*; or  
 8 2. Disability benefits law.

9 (ECF No. 16-1 at 174) (emphasis added).

10 Plaintiff responded that, in light of the Nevada Industrial Insurance Act ("NIIA") and the  
 11 instigating driver's negligence, he is not obligated to pursue workers' compensation before seeking  
 12 coverage from an insurance policy, particularly when that insurance policy is between an  
 13 individual and the insurance provider—not an employer. (ECF No. 24). Additionally, plaintiff  
 14 offers that Nevada Revised Statute 616C.215 and case law allow him to pursue full recovery from  
 15 defendant. (*Id.*). Finally, plaintiff asserts that the terms of the policy do not exclude benefits to  
 16 plaintiff because "he is not entitled to receive payment through the NIIA" and any estimate as to  
 17 the amount he would have received would be mere speculation. (*Id.* at 8–9).

18 Defendant replies that the relevant policy language explicitly "excludes coverage if the  
 19 insured is entitled to workers' compensation benefits." (ECF No. 26 at 3). Moreover, defendant  
 20 asseverates that a favorable ruling would not be against public policy, particularly since plaintiff  
 21 elected not to claim those benefits he allegedly was eligible to receive. (*Id.*).

## 22 II. Legal Standard

23 "Nevada law permits an automobile insurer to exclude coverage for medical expenses to  
 24 the extent the expenses are paid by worker's compensation insurance in order to prevent a double  
 25 recovery by the insured." *Rubin v. State Farm Mut. Auto. Ins. Co.*, 222 F.3d 750, 751 (9th Cir.  
 26 2000); *see also Phelps v. State Farm Mut. Auto. Ins. Co.*, 917 P.2d 944, 947 (1996).

27 [I]n determining an insurance policy's meaning, we should examine the language  
 28 from a layperson's viewpoint. Additionally, an insurer that intends to restrict a  
 29 policy's coverage must use language that clearly communicates the scope of the  
 30 limitation to the insured. Finally, any ambiguity or uncertainty in the policy must  
 31 be construed against the insurer and in favor of coverage for the insured.

1       *Rubin*, 43 P.3d 1018, 1020 (Nev. 2002) [hereinafter *Rubin II*] (footnotes omitted). “A contract is  
 2 ambiguous when it is subject to more than one reasonable interpretation. Any ambiguity . . . should  
 3 be construed against the drafter.” *Anvui, LLC v. G.L. Dragon, LLC*, 163 P.3d 405, 407 (Nev.  
 4 2007). Finally, “parties are free to contract, and the courts will enforce their contracts if they are  
 5 not unconscionable, illegal, or in violation of public policy.” *Rivero v. Rivero*, 216 P.3d 213, 226  
 6 (Nev. 2009).

7                      **III. Discussion**

8       The policy terms offered by defendant as the basis of its motion are either inapplicable or  
 9 risk being ambiguous or impermissibly draconian. Parts B and C of the “Limit of Liability” section  
 10 of the policy seek to prevent “duplicate payment”; here there has been no payment from workers’  
 11 compensation—the subject of the present motion. (ECF Nos. 16, 16-1). There is no risk of  
 12 “duplicating” something that does not exist.<sup>1</sup>

13       Next, the terms of part D of the offered policy language are concerningly absolute and  
 14 vague: “We will not pay for *any* element of loss if a person is entitled to receive payment for the  
 15 same element of loss under [workers’ compensation law].” (ECF No. 16-1 at 174) (emphasis  
 16 added). This use of the comprehensive phrase “any element” is troubling in light of the policy’s  
 17 lack of the definition of the term “payment”; a lay person could read that clause to mean that a  
 18 comparatively tiny “payment” could eliminate defendant’s obligation to provide benefits—  
 19 regardless of their value. *See Ruben II*, 43 P.3d at 1020. Therefore, this “uncertainty” in the policy  
 20 language requires a reading of the policy text adverse to defendant and in favor of coverage. *Id.*;  
 21 *see also Anvui, LLC*, 163 P.3d at 407.

22       Accordingly,

23       IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant’s motion for  
 24 declaration of offset (ECF No. 16), be, and the same hereby is, DENIED.

25       DATED January 31, 2017.

26                        
 27                      \_\_\_\_\_  
 28                      UNITED STATES DISTRICT JUDGE

1       Moreover, the policy does not define the term “element of loss,” which may be  
 2 ambiguous. (ECF No. 16-1); *see Ruben II*, 43 P.3d at 1020. However, the court does not need to  
 3 decide this question of ambiguity or confusion for the present motion.